UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF: Diamond Alkali Superfund Site (Lower Passaic River Study Area) Occidental Chemical Corporation, Settling Party.	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR COMBINED SEWER OVERFLOW/STORM WATER OUTFALL INVESTIGATION U.S. EPA Region II CERCLA Docket No. 02-2011-2016 Proceeding Under Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§9604, 9607, and 9622.

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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR COMBINED SEWER OVERFLOW/STORM WATER OUTFALL INVESTIGATION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Occidental Chemical Company ("Settling Party"). The Settlement Agreement concerns the preparation of a work plan and performance of a combined sewer overflow/storm water outfall investigation ("CSO/SWO Investigation") in the Lower Passaic River Study Area ("LPRSA") of the Diamond Alkali Superfund Site ("Site") and the reimbursement for past and future response costs incurred by EPA in connection with the CSO/SWO Investigation.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was redelegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division on November 23, 2004.

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration, the Department of the Interior/Fish and Wildlife Service, and the State of New Jersey Department of Environmental Protection/Office of Natural Resources Restoration on October 19, 2006, as trustees of natural resources related to the Lower Passaic River ("Trustees") of negotiations with potentially responsible parties regarding this CSO/SWO Investigation.

4. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law and determinations in Sections V and VI of this Settlement Agreement. Settling Party agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

5. EPA and Settling Party acknowledge that an investigation of combined sewer overflows was contemplated under the auspices of the 1994 Administrative Order on Consent ("AOC") described in Paragraph 25. Because the activities under the 1994 AOC, with the exception of the Work required under this Settlement Agreement, have been suspended by EPA by letter dated January 30, 2001 and largely superseded by the activities required under

the 2007 AOC agreed to by the Lower Passaic River Study Area Cooperating Parties Group ("LPRSA CPG"), as described in Paragraph 30, EPA and Settling Party agree that, on the Effective Date of this Settlement Agreement, Settling Party shall be deemed to have no further obligations under the 1994 AOC.

6. As set forth in Paragraph 5 of the 2008 AOC entered into between Settling Party, Tierra Solutions, and EPA (U.S. EPA Region 2 CERCLA Docket No. 02-2008-2020), Settling Party and Tierra Solutions, Inc. ("Tierra") have represented that pursuant to a 1986 stock transaction, the corporation now named Maxus Energy Corporation ("Maxus") indemnified Settling Party for (among other things) environmental liabilities arising from ownership and/or operation of 80 and 120 Lister Avenue by Diamond Shamrock Chemicals Company or its predecessors in interest; that, in 1996, Tierra (then known as Chemical Land Holdings, Inc.) agreed by contract with Maxus to perform the indemnification responsibilities that Maxus owes Settling Party; and further that because of these agreements, Maxus and Tierra participated in the negotiation of the 2008 AOC on Settling Party's behalf, and otherwise acknowledged their private contractual responsibilities to perform on Settling Party's behalf the Work required by that 2008 AOC. In that 2008 AOC, Settling Party and Tierra further represented that Maxus and Tierra negotiated and/or performed on Settling Party's behalf the work required under a judicial consent decree and various administrative orders on consent referenced in the 2008 AOC. Pursuant to the terms of the 2008 AOC, the parties to that AOC recognized that the actions undertaken in that AOC did not constitute an admission of liability and that Tierra did not admit and retained the right to controvert in subsequent proceedings, other than proceedings to implement or enforce the AOC, the validity of findings of fact, conclusions of law, and determinations contained in the AOC.

II. PARTIES BOUND

7. This Settlement Agreement applies to and is binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate status of Settling Party including, but not limited to, any transfer of assets or real or personal property shall not alter Settling Party's responsibilities under this Settlement Agreement.

8. Settling Party shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Settling Party shall be responsible for any noncompliance with this Settlement Agreement.

9. The undersigned representative of Settling Party certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Settling Party to this document. The signatory for the LPRSA CPG represents that he or she is authorized to sign for the limited purpose of Paragraph 110.

III. STATEMENT OF PURPOSE

10. In entering into this Settlement Agreement, the objectives of EPA and Settling Party are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of

Waste Material or other hazardous substances, pollutants or contaminants emanating from the Combined Sewer Overflows ("CSOs") and Storm Water Outfalls ("SWOs") discharging into the LPRSA, by conducting a CSO/SWO Investigation as more specifically set forth in the Work Plan attached as Appendix A to this Settlement Agreement; and (b) to recover response and oversight costs incurred by EPA with respect to this Settlement Agreement, as well as Past Response Costs.

11. The Work conducted under this Settlement Agreement is subject to approval by EPA and shall provide appropriate and necessary information to assess CSO/SWO discharges consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Settling Party shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidance documents, policies, and procedures.

IV. DEFINITIONS

12. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Combined Sewer Overflow/Storm Water Outfall Investigation ("CSO/SWO Investigation") shall mean that study that is outlined in the Work Plan, as set forth in Appendix A to this agreement, and any amendments thereto.

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXIX.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other deliverables pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 54 (Emergency Response), Paragraph 68 (costs and attorneys fees and any monies paid to secure access, including, but

not limited to, the amount of just compensation), and Paragraph 97 (Work Takeover). Future Response Costs shall also include all Interim Response Costs.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Interim Response Costs" shall mean all costs, including direct and indirect costs (a) paid by the United States in connection with the preparation of the Settlement Agreement or the Work Plan between March 31, 2011 and the Effective Date or (b) incurred prior to the Effective Date, but paid after that date.

i. "Lower Passaic River Study Area" or "LPRSA" shall mean the 17-mile stretch of the lower Passaic River and its tributaries from the Dundee Dam to Newark Bay.

j. "Lower Passaic River Study Area Cooperating Parties Group" or "LPRSA CPG" shall mean signatories to the Administrative Settlement Agreement and Order on Consent, CERCLA Docket 02-2007-2009 under which a Remedial Investigation/Feasibility Study is being performed in the LPRSA.

k. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

m. "Parties" shall mean EPA and Settling Party.

n. "Past Costs" shall mean all costs, including, but not limited to direct and indirect costs, that the United States paid at or in connection with the preparation of the CSO/SWO Investigation Settlement Agreement through March 31, 2011.

o. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*

p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

q. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, the Work Plan, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon

approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

r. "Settling Party" shall mean Occidental Chemical Corporation or OCC, a successor to Diamond Shamrock Chemicals Company, which has its headquarters and principal place of business in Dallas, Texas.

s. "Site" shall mean the Diamond Alkali Superfund Site, including the Diamond Alkali plant located at 80 and 120 Lister Avenue in Newark, New Jersey (known as Operable Unit 1), and the Lower Passaic River Study Area and the areal extent of contamination.

t. "State" shall mean the State of New Jersey.

u. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

v. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

w. "Work" shall mean all activities Settling Party is required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

x. "Work Plan" shall mean the Quality Assurance Project Plan for the CSO/SWO Investigation for the Lower Passaic River Study Area of the Diamond Alkali Superfund Site, as set forth in Appendix A to this Settlement Agreement. The Work Plan is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

V. EPA FINDINGS OF FACT

13. The bottom sediments of the lower Passaic River contain concentrations of numerous hazardous substances, including, but not limited to, cadmium, copper, lead, mercury, nickel, zinc, polyaromatic hydrocarbons ("PAHs") bis(2-ethylhexyl) phthalate, polychlorinated biphenyls ("PCBs") dichlorodiphenyl-trichloroethate ("DDT"), total extractable petroleum hydrocarbons ("TEPH"), polychlorinated dibenzo-p-dioxins ("PCDDs"), including 2, 3, 7, 8-Tetrachloro-dibenzo-p-dioxin ("2,3,7,8-TCDD), polychlorinated dibenzofurans ("PCDFs"), 2,4-Dichlorophenoxy acetic acid ("2,4-D"), 2,4,5-Trichlorophenoxy acetic acid ("2,4,5-T") and 2,4,5-Trichlorophenol ("2,4,5-TCP").

14. Since the late 1800s, the lower Passaic River, has been a highly industrialized waterway, receiving direct and indirect discharges from numerous industrial facilities and municipalities.

15. Between March 1951 and August 1969, the Diamond Alkali Company operated a facility located at 80 Lister Avenue ("the Diamond Alkali Facility"). Among other chemicals, the company manufactured 2,4-D, 2,4,5-T, and 2,4,5-TCP, from which 2,3,7,8-TCDD is a by-product.

16. Production activities at the Diamond Alkali Facility ceased in August 1969.

17. The entity which operated the Diamond Alkali Facility from 1951-1969 was Diamond Alkali Company, which changed its name in 1967 to Diamond Shamrock Corporation, and, in 1983, to Diamond Shamrock Chemicals Company. Maxus became the owner of Diamond Shamrock Chemicals Company's stock in 1983. In 1986, through a stock transaction, Diamond Shamrock Chemicals Company became a wholly-owned indirect subsidiary of Occidental Petroleum Corporation and was then renamed Occidental Electrochemicals Corporation. In 1987, Occidental Electrochemicals Corporation was merged into Occidental Chemical Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation.

18. Numerous CSOs and SWOs discharge to the Lower Passaic River Study Area. A number of the municipalities adjacent to the lower Passaic River have combined sewer systems, which discharge through CSOs.

a. Based upon permitting information from the New Jersey Department of Environmental Protection ("NJDEP"), it is estimated that there are over 40 combined sewers in the Lower Passaic River Study Area that discharge sanitary and industrial waste into the River and its tributaries and have done so since the completion of construction of the Passaic Valley Sewerage Commissioners' system in 1924.

b. Based upon NJDEP records and information from municipalities along the River and from the Passaic Valley Sewerage Commissioners, it is estimated that there are over 300 municipal and industrial SWOs that discharge untreated storm water into the Passaic River and its tributaries and have done so for many decades.

History of Studies and Response Actions

19. During the summer of 1983, hazardous substances were detected at various locations in Newark, New Jersey, including 80 Lister Avenue. Removal activities were initiated by EPA and the New Jersey Department of Environmental Protection ("DEP") in 1983 and were completed by Diamond Shamrock Chemicals Company in 1984 through 1986.

20. EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Diamond Alkali Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 *Fed. Reg.* 37070.

21. Removal activities at the Diamond Alkali Facility were initiated by EPA and NJDEP in 1983 and completed by Diamond Shamrock Chemicals Company in 1984 through 1986 pursuant to Administrative Consent Orders with NJDEP. The Remedial Investigation/Feasibility Study ("RI/FS") conducted at the Diamond Alkali Facility included the sampling and assessment of sediment contamination within the Passaic River.

22. EPA issued an operable unit Record of Decision ("ROD") on September 30, 1987, which documents the selection of an interim remedial action plan for the cleanup of the 80 and 120 Lister Avenue portion of the Diamond Alkali Superfund Site. Pursuant to a judicial Consent Decree with EPA, NJDEP, and Chemical Land Holdings, Inc., which had acquired the property shortly before the 1986 stock transaction and was a party to the Consent Decree for specific, limited purposes, Settling Party agreed to implement the 1987 ROD. Also, in 1987, the name of Diamond Shamrock Chemical Land Holdings, Inc. was changed to Chemical Land Holdings and, in 2002, was changed to Tierra Solutions, Inc.

23. Sampling of the Passaic River sediment during the course of the remedial investigation of the Diamond Alkali Facility showed the presence of many hazardous substances including, but not limited to, 2,3,7,8-TCDD, 2,4-D, 2,4,5-T, and 2,4,5-TCP, DDT, PCBs, PAHs, mercury, cadmium, copper, lead, nickel, and zinc.

24. Some of the chemicals found in the sediments during the course of the remedial investigation may have migrated from the Diamond Alkali Facility portion of the Diamond Alkali Superfund Site into the Passaic River through ground-water and surface-water runoff.

25. Settling Party and EPA entered into an Administrative Order on Consent, Index No. II-CERCLA-0117, April 20, 1994 ("the AOC"), pursuant to which Settling Party was ordered and agreed to conduct an RI/FS with respect to a portion of the Passaic River from the abandoned ConRail Railroad bridge at the downriver boundary located at the U.S. Army Corps of Engineers ("USACE") station designation of 40+00 (i.e., a transect running perpendicular to the USACE Federal Project Limit for dredging 4000 feet upstream from the red channel junction marker at the confluence of the Hackensack and Passaic Rivers) to a transect six miles (31680 feet) upriver located at the USACE station designation of 356+80.

26. On March 28, 1996, Diamond Shamrock Corporation submitted a report entitled "Passaic River Sediment Study," which further defined the extent of 2,3,7,8-TCDD contamination in the Passaic River sediments. Core (i.e., samples taken at depth) and surface grab samples were taken from the downriver boundary of the RI/FS study area upstream to Dundee Dam.

27. The data also showed the presence of other hazardous substances including, but not limited to, cadmium, copper, lead, mercury, nickel, zinc, PAHs, DDT, and PCBs, among other hazardous substances. The concentrations of some of these hazardous substances exceed the levels that can produce toxic effects to biota and potentially impact human health. Further, the sampling results from the investigation performed under the AOC and other environmental studies demonstrated that evaluation of a larger geographic area in the Passaic River was necessary.

28. In January of 2001 EPA by letter directed Settling Party to suspend certain work under the AOC, which it has done.

29. Pursuant to the Water Resources Development Act ("WRDA"), the USACE received Congressional appropriations to conduct an ecosystem restoration study with its local sponsor, the New Jersey Department of Transportation ("NJDOT"). Because an expanded EPA study of the Passaic River and the USACE/NJDOT study have many overlapping information needs, the three agencies formed a partnership to identify and address water quality improvement, remediation, and restoration opportunities in the 17 mile stretch of the lower Passaic River from Dundee Dam to Newark Bay. This expanded study became the Lower Passaic River Restoration Project, conducted by EPA under the authority of CERCLA and by USACE and NJDOT, under the authority of WRDA. The federal and State Natural Resource Trustees (specifically, the Fish and Wildlife Service of the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, and NJDEP) have provided input to the process.

30. As part of this expanded study, EPA, with the assistance of NJDEP, undertook an RI/FS that would encompass a larger geographic area in the Lower Passaic River. In May 2007, however, the LPRSA CPG entered into an AOC, CERCLA Docket No. 02-2007-2009, under which the CPG will complete that RI/FS for the LPRSA. The work pursuant to that AOC is on-going, as is work relating to other response actions in the LPRSA.

31. Studies have shown that many of the substances referred to in the preceding Paragraphs can cause a variety of adverse, acute and/or chronic effects in exposed population groups.

32. Based on the results of monitoring and research undertaken since the mid-1970s, the State of New Jersey has taken a number of steps, in the form of consumption advisories, closures, and sales bans, to limit the exposure of the fish-eating public to toxic contaminants in the lower Passaic River, Newark Bay, the Hackensack River, the Arthur Kill and the Kill Van Kull. The initial measures prohibited the sale, and advised against the consumption, of several species of fish and eel and was based on the presence of PCB contamination in the seafood. The discovery of widespread dioxin contamination in the Newark Bay Complex led the State of New Jersey to issue a number of fish consumption advisories in 1983 and 1984 which prohibited the sale or consumption of all fish, shellfish, and crustaceans from the Lower Passaic River Study Area. These State fish advisories and prohibitions are still in effect.

33. Settling Party has undertaken preliminary investigations to demonstrate that CSOs/SWOs in the lower Passaic River are an on-going source of hazardous substances.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, EPA has determined that:

34. The Lower Passaic River Study Area portion of the Diamond Alkali Superfund Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

35. Settling Party is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and for purposes of liability under one or more subsections of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

36. The substances and contaminants found in the sediments of the Lower Passaic River Study Area and identified in the Findings of Fact section of this Settlement Agreement, including, but not limited to 2,4-D, 2,4,5-T, 2,4,5-TCP, 2,3,7,8-TCDD, cadmium, copper, lead, mercury, nickel, zinc, PAHs, DDT, and PCBs are "hazardous substances" within the meaning of that term as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or constitute "any pollutant or contaminant" that may present an imminent or substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

37. The disposal of hazardous substances in the LPRSA, the presence of hazardous substances in the sediment in the LPRSA, the subsequent migration of hazardous substances within the LPRSA, and the potential migration of all such substances outside of the boundaries of the LPRSA as described in the Findings of Fact, are actual and/or threatened "releases" within the meaning of that term as it is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and are a "release" or "substantial threat of such a release" into the environment for purposes of Section 104(a)(1).

38. Settling Party is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.

39. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

40. EPA has determined that Settling Party is qualified, within the meaning of Section 104(a) of CERCLA, 42 U.S.C.§9604(a), to conduct the CSO/SWO Investigation and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Settling Party complies with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

41. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Settling Party shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

42. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Settlement Agreement, and before the Work outlined below

begins, Settling Party shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Settling Party shall demonstrate that the proposed contractor has a Quality System that complies with the Uniform Federal Policy for Implementing Quality Systems (UFP-QS), (EPA/505/F-03/001, March 2005), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The qualifications of the persons undertaking the Work for Settling Party shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Settlement Agreement is contingent on Settling Party's demonstration to EPA's satisfaction that Settling Party is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Settling Party shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete CSO/SWO Investigation, and to seek reimbursement for costs and penalties from Settling Party. During the course of the CSO/SWO Investigation, Settling Party shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

43. Within 10 days after the Effective Date, Settling Party shall designate a Project Coordinator who shall be responsible for administration of all actions by Settling Party required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available by telephone during Site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Settling Party shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 15 days following EPA's disapproval. Settling Party shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Settling Party shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Settling Party's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Settling Party.

44. Within 10 days after the effective date, EPA will designate a Project Coordinator from the Emergency and Remedial Response Division. EPA will notify Settling Party of a change of its designated Project Coordinator. Except as otherwise provided in this Settlement Agreement, Settling Party shall direct all submissions required by this Settlement Agreement to the Project Coordinator at the following address and at an e-mail address to be provided when the Project Manager is designated:

Project Coordinator
U.S. EPA–Region II
290 Broadway, 19th Floor

New York, New York 10007-1866.

45. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

46. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the CSO/SWO Investigation, as required by Section 104(a) of CERCLA, 42 U.S.C. §9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the CSO/SWO Investigation Work Plan.

IX. WORK TO BE PERFORMED

47. The Settling Party shall finance and perform all activities required under this Settlement Agreement, as described in the Work Plan.

48. Settling Party shall submit one hard copy and one electronic copy of all reports and other deliverables to EPA, except if requested otherwise by EPA, and except as specified in Paragraph 53.

49. Modification of the CSO/SWO Investigation Work Plan.

a. At the completion of the method detection limit ("MDL") studies, worksheet 15 in the Work Plan, and other portions of the Work Plan as necessary, will be revised to reflect the results of the MDL studies. When this occurs, EPA will transmit a revised Work Plan, which will replace the attached Appendix A.

b. If at any other time during the CSO/SWO Investigation process, Settling Party identifies a need for additional data, Settling Party shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within 15 days of identification. EPA in its discretion will determine whether the additional data will be collected by Settling Party and whether it will be incorporated into reports and deliverables.

c. In the event of unanticipated or changed circumstances at the Site, Settling Party shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly. Settling Party shall perform the Work Plan as modified or amended.

d. EPA may determine that in addition to tasks defined in the initially approved Work Plan, other additional Work may be necessary to accomplish the objectives of the CSO/SWO Investigation. Settling Party agrees to perform these response actions in addition to those required by the initially approved Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete CSO/SWO Investigation.

e. Settling Party shall confirm its willingness to perform the additional Work in writing to EPA within 15 days of receipt of the EPA request. If Settling Party objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Settling Party may seek dispute resolution pursuant to Section XV (Dispute Resolution). The Work Plan shall be modified in accordance with the final resolution of the dispute.

f. Settling Party shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan supplement. If Settling Party does not complete the additional Work in compliance with this Settlement Agreement and any modification to the Work Plan, EPA reserves the right to conduct the additional Work itself at any point, to seek reimbursement from Settling Party, and/or to seek any other appropriate relief.

g. Settling Party may propose modifications to the Work Plan for consideration by EPA. If the Settling Party proposes any modifications, it shall submit them to EPA for review and approval under Paragraph 55 of the Settlement Agreement. EPA shall retain the final authority to approve or disapprove modifications to the Work Plan proposed by Settling Party. If EPA and Settling Party are unable to agree upon any such proposed modifications, Settling Party reserves its rights to submit comments to EPA setting forth its position with respect to any proposed modifications rejected by EPA.

h. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

50. Community Relations Plan. EPA has prepared a community relations plan, in accordance with EPA guidance and the NCP. As requested by EPA, Settling Party shall provide information supporting EPA's community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the CSO/SWO Investigation.

51. Off-Site Shipment of Waste Material. Settling Party shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Settling Party shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped: (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Settling Party shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Settling Party following the award of the contract for the CSO/SWO Investigation. Settling Party shall provide the information required by Subparagraph 51(a) and 51(c) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Party shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Settling Party shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

52. Meetings. Settling Party shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the CSO/SWO Investigation. In addition to discussion of the technical aspects of the CSO/SWO Investigation, topics will include anticipated problems or new issues. 'Meetings will be scheduled at EPA's discretion.

53. Progress Reports. In addition to the other deliverables set forth in this Settlement Agreement, Settling Party shall provide to EPA monthly progress reports by the 20th day of each month following the effective date of this Settlement Agreement. Respondent's obligation to submit progress reports continues until EPA gives Respondent written notice under this Order ending this requirement. At a minimum with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during that month, (2) include all results of sampling and tests and all other data received by Settling Party, (3) describe Work Planned for the next two months with schedules relating such Work to the overall project schedule for the CSO/SWO Investigation completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays. Monthly progress reports may be provided in electronic form.

54. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the

environment, Settling Party shall immediately take all appropriate action. Settling Party shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Settling Party shall also immediately notify the EPA Project Coordinator and the Emergency Spill Reporting Hotline at 732-548-8730 of the incident or Site conditions. In the event that Settling Party fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Settling Party shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Settling Party shall immediately notify the EPA Project Coordinator and the National Response Center at (800) 424-8802. Settling Party shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq*.

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

55. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Party modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Party at least one notice of deficiency and an opportunity to cure within 15 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

56. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 55(a), (b), (c) or (e), Settling Party shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submittal or portion thereof, Settling Party shall not thereafter alter or amend such submittal or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 55(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

57. Resubmission of Plans.

a. Upon receipt of a notice of disapproval, Settling Party shall, within 15 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 15-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 58 and 59.

b. Notwithstanding the receipt of a notice of disapproval, Settling Party shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Settling Party of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. EPA reserves the right to stop Settling Party from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the CSO/SWO Investigation.

58. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Settling Party to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Settling Party shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Settling Party's right to invoke the procedures set forth in Section XV (Dispute Resolution).

59. If upon resubmission, a plan, report, or deliverable is disapproved or modified by EPA due to a material defect, Settling Party shall be deemed to have failed to submit such plan, report, or deliverable timely and adequately unless Settling Party invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superceded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superceded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

60. In the event that EPA takes over some of the tasks, but not the preparation of the CSO/SWO Investigation Report, Settling Party shall incorporate and integrate information supplied by EPA into the final report.

61. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and

enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

62. Neither failure of EPA to expressly approve or disapprove of Settling Party's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Settling Party's deliverables, Settling Party is responsible for preparing deliverables acceptable to EPA.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

63. Quality Assurance. Settling Party shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the Work Plan. Settling Party will assure that field personnel used by Settling Party are properly trained in the use of field equipment and in chain of custody procedures. Settling Parties shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001; reissued May 2006) and the "Uniform Federal Policy for Implementing Quality Systems (UFP-QS)" (EPA-505-F-03-001, March 2005) or equivalent documentation as determined by EPA.

64. Sampling.

a. All results of sampling, tests, modeling or other data generated in connection with the Work by Settling Party, or on Settling Party's behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the next monthly progress report as described in Paragraph 53 of this Settlement Agreement following data validation. Final validated data will be provided to EPA by Settling Party in electronic submittals in accordance with EPA Region 2 policies, guidelines, and format. The Region 2 Electronic Data Deliverable (EDD) is a standardized format for all electronic submittals. The most recent EDD Guidance and Requirements can be found at http://www.epa.gov/region02/superfund/medd.htm. EPA will make available to Settling Party validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation. Settling Party shall make raw data available to EPA upon request.

b. Settling Party shall verbally notify EPA at least seven days prior to initiating construction of the field sampling trailer and to deploying its sampling crew on standby to await significant storm events for sampling. Because of the episodic nature of the sampling, Settling Party shall verbally notify EPA 24 hours, or as otherwise agreed with the Project Coordinator, prior to mobilizing its sampling crew to the field for an intended sampling event. At EPA's verbal or written request, or the request of EPA's oversight assistant, Settling Party shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples of Settling Party shall be analyzed by the methods identified in the Work Plan.

65. Access to Information.

a. Settling Party shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Party shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Settling Party may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Settling Party that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Party. Settling Party shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Settling Party asserts business confidentiality claims.

c. Settling Party may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Settling Party. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

66. In entering into this Settlement Agreement, Settling Party waives any objections to any data gathered, generated, or evaluated by EPA, the State or Settling Party in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement or any EPA-approved work plans or sampling and analysis plans. If Settling Party objects to any other data relating to the CSO/SWO Investigation, Settling Party shall submit to EPA a

report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

XII. SITE ACCESS

67. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Settling Party, Settling Party shall, commencing on the Effective Date, provide EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

68. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Settling Party, Settling Party shall use its best efforts to obtain all necessary access agreements within 90 days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator. Settling Party shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Settling Party shall describe in writing its efforts to obtain access. If Settling Party cannot obtain access agreements, EPA may either (i) obtain access for Settling Party or assist Settling Party in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; (iii) grant its permission for Settling Party to modify the CSO/SWO Investigation Work Plan to sample a different location; or (iv) terminate the Settlement Agreement. Settling Party shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Settling Party shall perform all other activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such activities. Settling Party shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

69. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

70. Settling Party shall comply with all applicable local, state and federal laws and regulations when performing the CSO/SWO Investigation. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Settling Party shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

71. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action relying on this sampling information, Settling Party shall preserve and retain all non-identical copies of documents, records and other information (including documents, records or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, Settling Party shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature or description relating to performance of the Work.

72. At the conclusion of this document retention period, Settling Party shall notify EPA at least 90 days prior to the destruction of any such documents, records or other information, and, upon request by EPA, Settling Party shall deliver any such documents, records or other information to EPA. Settling Party may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Settling Party. However, no documents, records or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

73. Settling Party hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. DISPUTE RESOLUTION

74. Settling Party and EPA shall make reasonable efforts to informally and in good faith resolve all disputes or differences of opinion which arise with respect to the implementation of this Settlement Agreement. Unless otherwise expressly provided for in the Settlement Agreement, the Dispute Resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement that

cannot otherwise be resolved expeditiously and informally. Disputes under provisions of this Settlement Agreement shall be resolved according to the following procedures:

a. If Settling Party objects in good faith to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 14 days of such action, unless the objection(s) has/have been resolved informally. EPA and Settling Party shall have 31 days from EPA's receipt of Settling Party's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

b. Any agreement reached by the Parties pursuant to section a, above, shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Lower Passaic River Project Director level or higher will issue a written decision on the dispute to Settling Party. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement.

c. If the dispute and its resolution, as described above cause a delay that makes it impossible for Settling Party to meet a deadline set forth in or established pursuant to this Settlement Agreement, then that deadline shall be extended by EPA by a period of time not to exceed the delay resulting from the dispute and its resolution; provided that Settling Party shall not be entitled to any such extension if the EPA management official determines that Settling Party's disagreement with the comments or determinations specified above is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Settling Party requests an extension of a deadline set forth in or established pursuant to this Settlement Agreement, and if EPA declines to grant an extension in response to such a request, any delay caused solely by the resolution of such a dispute shall not entitle Settling Party to an extension of time.

75. Notwithstanding any of the foregoing, EPA will be the final arbiter of all disputes under this Settlement Agreement and the final arbiter as to the sufficiency and acceptability of all work conducted pursuant to this Settlement Agreement. However, nothing in this Paragraph shall affect any rights that Settling Party may have to judicial review, if any, of EPA's actions or determinations under this Settlement Agreement, and, except as provided in Sections XX and XXII, respectively, EPA and Settling Party expressly reserve all rights and defenses they may have pursuant to applicable law.

XVI. STIPULATED PENALTIES

76. Settling Party shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 77 and 78 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Settling Party shall include completion of the Work under this Settlement Agreement or any activities contemplated under any Work Plan or other plan approved under

this Settlement Agreement identified below, in accordance with all applicable requirements of law, this Settlement Agreement, the Work Plan, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

77. **Stipulated Penalty Amounts**

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Subparagraph 77(b):

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 3,000	15th through 30th day
$ 6,000	31st day and beyond

b. Compliance Milestones subject to the stipulated penalties listed in Subparagraph 77(a) shall include:

i. Phase I Data Evaluation Report; and
ii. Data Usability Assessment Report.

78. **Stipulated Penalty Amounts**

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to all other provisions:

Penalty Per Violation Per Day	Period of Noncompliance
$ 500	1st through 14th day
$ 1,000	15th through 30th day
$ 1,500	31st day and beyond

79. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 97 of Section XX (Reservation of Rights by EPA), Settling Party shall be liable for a stipulated penalty in the amount of $500,000.00. EPA agrees that any penalty assessed against Settling Party under this Paragraph shall be reduced, if appropriate, by the percentage of Work completed by the Settling Party. This Paragraph shall not apply to circumstances described in Paragraph 68 in which EPA performs Work because Settling Party is unable to obtain access.

80. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the

correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Party of any deficiency; and (2) with respect to a decision by the EPA management official designated in Paragraph 74 of Section XV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

81. Following EPA's determination that Settling Party has failed to comply with a requirement of this Settlement Agreement, EPA may give Settling Party written notification of the same and describe the noncompliance. EPA may send Settling Party a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Party of a violation.

82. a. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Settling Party's receipt from EPA of a demand for payment of the penalties, unless Settling Party invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution). Settling Party shall make payment by remitting the amount of the payment to EPA by Electronic Funds Transfer ("EFT") to the Federal Reserve Bank of New York, accompanied by a statement providing the following information:

- Amount of payment
- EFT to be directed to: Federal Reserve Bank of New York
- Bank routing number: 021030004
- Bank account number receiving the payment: 68010727
- SWIFT address: FRNYUS33
- Address: Federal Reserve Bank of New York
  33 Liberty Street
  New York, NY 10045
- Field Tag 4200 of the Fedwire message to read:
  D 68010727 Environmental Protection Agency
- Name of remitter: Occidental Chemical Corporation
- Case number: CERCLA-02-2011-2016
- Site/Spill Identifier: **02-96**

b. To ensure that payment is properly recorded, within one week of the EFT, Settling Party shall send notice that the payment has been made as provided in Paragraph 90(b).

83. The payment of penalties shall not alter in any way Settling Party's obligation to complete performance of the Work required under this Settlement Agreement.

84. Penalties shall continue to accrue as provided in Paragraph 80 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

85. If Settling Party fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Settling Party shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 82.

86. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Settling Party's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 97. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE

87. Settling Party agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Settling Party or of any entity controlled by Settling Party, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Settling Party's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

88. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Settling Party shall notify EPA orally within 72 hours of when Settling Party first knew that the event might cause a delay. Within seven (7) days thereafter, Settling Party shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Party's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Party, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Settling Party from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

89. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Settling Party in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Settling Party in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS

90. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Party shall pay to EPA $165,963.52 for Past Response Costs. Settling Party shall make payment by remitting the amount of the payment to EPA by Electronic Funds Transfer ("EFT") to the Federal Reserve Bank of New York, accompanied by a statement providing the following information:

- Amount of payment: $165,963.52
- EFT to be directed to: Federal Reserve Bank of New York
- Bank routing number: 021030004
- Bank account number receiving the payment: 68010727
- SWIFT address: FRNYUS33
- Address: Federal Reserve Bank of New York
  34 Liberty Street
  New York, NY 10045
- Field Tag 4200 of the Fedwire message to read:
  D 68010727 Environmental Protection Agency
- Name of remitter: Occidental Chemical Corporation
- Case number: CERCLA-02-2011- 2016
- Site/Spill Identifier: 02-96

b. At the time of payment, Settling Party shall send notice that payment has been made to:

EPA Project Coordinator
Emergency & Remedial Response Division
U.S. Environmental Protection Agency
290 Broadway, 19th Floor
New York, NY 10007-1866
Diamond Alkali Superfund Site -- CSO/SWO Investigation

Assistant Regional Counsel
Office of Regional Counsel

U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866
Diamond Alkali Superfund Site -- CSO/SWO Investigation

U.S. Environmental Protection Agency
Cincinnati Finance Center, MS: NWD
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
Attn: Finance (Richard Rice)
AcctsReceivable.CINWD@epa.gov

Such notice shall reference the Site/Spill ID Number and EPA docket number for this action.

c. The total amount to be paid by Settling Party pursuant to Subparagraph 90(a) shall be deposited in the Diamond Alkali Superfund Site Operable Unit 2 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund.

91. Payments of Future Response Costs.

a. Settling Party shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Settling Party a bill requiring payment that includes a Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Settling Party shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 92 of this Settlement Agreement. Settling Party shall make payment by remitting the amount of the payment to EPA by Electronic Funds Transfer ("EFT") to the Federal Reserve Bank of New York, accompanied by a statement providing the following information:

- Amount of payment
- EFT to be directed to: Federal Reserve Bank of New York
- Bank routing number: 021030004
- Bank account number receiving the payment: **68010727**
- SWIFT address: FRNYUS33
- Address: Federal Reserve Bank of New York
  35 Liberty Street
  New York, NY 10045
- Field Tag 4200 of the Fedwire message to read:
  D 68010727 Environmental Protection Agency
- Name of remitter: Occidental Chemical Corporation
- Case number: CERCLA-02-2011- 2016
- Site/Spill Identifier: **02-96**

b. At the time of payment, Settling Party shall send notice that payment has been made to the addresses identified in 90(b), above.

c. The total amount to be paid by Settling Party pursuant to Subparagraph 91(a) shall be deposited in the Diamond Alkali Superfund Site, Operable Unit 2 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

92. If Settling Party does not pay Past Costs within 30 days or does not pay Future Response Costs within 30 days of Settling Party's receipt of a bill, Settling Party shall pay Interest on the unpaid balance of Past Response Costs and Future Response Costs, respectively. The Interest on unpaid Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Party's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Settling Party shall make all payments required by this Paragraph in the manner described in Paragraph 91.

93. Settling Party may contest payment of any Future Response Costs under Paragraph 91 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA has incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Party shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 91. Simultaneously, Settling Party shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Party shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Party shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within five days of the resolution of the dispute, Settling Party shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 91. If Settling Party prevails concerning any aspect of the contested costs, Settling Party shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 91. Settling Party shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction

with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Party's obligation to reimburse EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

94. In consideration of the actions that will be performed and the payments that will be made by Settling Party under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XVIII of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XVIII and XVI of this Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Settling Party of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Settling Party and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

95. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Settling Party in the future to perform additional activities pursuant to CERCLA or any other applicable law.

96. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all other matters, including, but not limited to:

a. claims based on a failure by Settling Party to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Lower Passaic River Study Area; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Lower Passaic River Study Area.

97. Work Takeover. In the event EPA determines that Settling Party has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Settling Party may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Party shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY SETTLING PARTY

98. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Past Response Costs or Future Response Costs have or will be incurred, including any claim under the United States Constitution, the New Jersey State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Past Response Costs or Future Response Costs.

d. This Covenant Not to Sue by Settling Party shall not extend to, and Settling Party specifically reserves, (1) any claims or causes of action in contribution

pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, against the United States as a "covered person" (within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)) with respect to this Settlement Agreement, based solely on actions by the United States other than the exercise of the government's authority under CERCLA or WRDA; and (2) any claims or causes of action pursuant to the Tucker Act, 28 U.S.C. § 1491, against the United States with respect to this Settlement Agreement based solely on contracts that do not address or relate to the exercise of the government's authority under CERCLA or WRDA.

99. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XX (Reservations of Rights by EPA), other than in Paragraph 96(a) (claims for failure to meet a requirement of the Settlement Agreement) or 96(d) (criminal liability), but only to the extent that Settling Party's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

100. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

101. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Settling Party.

102. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Settling Party or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

103. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

104. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. § 9613(f)(2) and 9622(h) and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Costs, and Future Response

Costs. Nothing in this Settlement Agreement precludes the United States or Settling Party from asserting any claims, causes of action, or demands against any person not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States for the Work, Past Response Costs, and Future Response Costs.

XXIV. INDEMNIFICATION

105. Settling Party shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Settling Party, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Settling Party agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Settling Party, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Party in carrying out activities pursuant to this Settlement Agreement. Neither Settling Party nor any such contractor shall be considered an agent of the United States.

106. The United States shall give Settling Party notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Settling Party prior to settling such claim.

107. Settling Party waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Party and any person for performance of Work on or relating to the Site. In addition, Settling Party shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Party and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

108. At least 30 days prior to commencing any On-Site Work under this Settlement Agreement, Settling Party shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of $2 million dollars, combined single limit, naming the EPA as an additional insured.

Within the same period, Settling Party shall provide EPA with certificates of such insurance and a copy of each insurance policy. Settling Party shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Settling Party shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Party in furtherance of this Settlement Agreement. If Settling Party demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Settling Party need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. ASSURANCE OF ABILITY TO COMPLETE THE WORK

109. Within 30 days of the Effective Date, Settling Party shall establish and maintain financial security for the benefit of EPA in the amount of $2,000,000 in one or more of the following forms, in order to secure the full and final completion of Work by Settling Party:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Settling Party, or by one or more unrelated companies that have a substantial business relationship Settling Party; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by Settling Party, which shall consist of a demonstration that any such Settling Party satisfies the requirements of 40 C.F.R. Part 264.143(f).

110. a. Settling Party has selected, and EPA has approved, that the financial assurance described in Paragraph 109 shall be the trust fund established pursuant to the Diamond Alkali Superfund Site – Lower Passaic River Study Area Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, CERCLA Docket No. 02-2007-2009 ("LPRSA RI/FS AOC"), a copy of which is attached to this Settlement Agreement. While the parties to the LPRSA RI/FS AOC, other

than Settling Party, are not a party to this Settlement Agreement, those parties are participating in the funding of the Work and the provision of financial assurance for the Work. Accordingly, a representative of the Lower Passaic River Study Area Cooperating Parties Group shall execute this Settlement Agreement to confirm that this trust fund shall provide the financial assurance for the Work required under this Settlement Agreement.

b. Notwithstanding EPA's approval of the Settling Party's reliance on the trust fund and the representations of common counsel for the Lower Passaic River Study Area Cooperating Parties Group, in the event that, at any time and for any reason, the Trust fails to provide $2 million in financial security, the Settling Party will establish the requisite financial security as otherwise provided in Paragraph 109 within 30 days.

111. Settling Party may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Party may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. INTEGRATION/APPENDICES

112. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports) that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the CSO/SWO Investigation Work Plan (read-only file, dated August 4, 2011on attached CD).

"Appendix B" is the Administrative Order on Consent, CERCLA Docket No. 02-2007-2009 ("LPRSA RI/FS AOC") Trust Agreement.

XXVIII. ADMINISTRATIVE RECORD

113. EPA will determine the contents of the administrative record file for selection of the remedial action. Settling Party shall submit to EPA documents developed during the course of the CSO/SWO Investigation upon which selection of the response action may be based. Upon request of EPA, Settling Party shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of EPA, Settling Party shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Settling Party and state,

local or other federal authorities concerning selection of the response action. At EPA's discretion, Settling Party shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

114. This Settlement Agreement shall be effective seven days after the Settlement Agreement is signed by the Regional Administrator or her delegatee.

115. This Settlement Agreement may be amended by mutual agreement of EPA and Settling Party. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Settlement Agreement. Modifications of the Work Plan may be made in accordance with Paragraph 49(g).

116. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Settling Party shall relieve Settling Party of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

117. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs pursuant to Paragraph 91 and record retention pursuant to Section XIV, EPA will provide written notice to Settling Party. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Settling Party, provide a list of the deficiencies, and require that Settling Party modify the Work Plan if appropriate in order to correct such deficiencies, in accordance with Paragraph 49 (Modification of the Work Plan). Failure by Settling Party to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

Agreed this 16th day of September, 2011.

For Settling Party _____

By: _____

Title: Senior Vice President - Business Analysis

The LPRSA CPG confirms that the trust fund created pursuant to the 2007 AOC shall provide the financial assurance for the Work required under this Settlement Agreement.

Lower Passaic River Study Area Cooperating Parties Group

By: _____

William H. Hyatt, Jr.
Coordinating Counsel

Date: 8-16-11

It is so ORDERED AND AGREED this 27th day of September, 2011.

BY: Walter Mugdan DATE: 9/27/11
Walter Mugdan, Director
Emergency and Remedial Response Division
Region II
U.S. Environmental Protection Agency

EFFECTIVE DATE: OCT - 4 2011